

U.S. Department of Justice



United States Attorney
Western District of Pennsylvania

U.S. Post Office & Courthouse
700 Grant Street
Suite 4000
Pittsburgh, Pennsylvania 15219

412-644-3500

June 11, 2010

Gary B. Zimmerman, Esquire
100 Ross Street, Suite 304
Pittsburgh, PA 15219

Re: United States of America v.
Right Ascension, Inc. (d/b/a Adult DVD Empire)
Criminal No. 10-143

Dear Mr. Zimmerman:

This letter sets forth the agreement by which your client, Right Ascension, Inc. (d/b/a Adult DVD Empire), will enter a plea of guilty in the above-captioned case. The letter represents the full and complete agreement among Right Ascension, Inc., the United States Attorney for the Western District of Pennsylvania and the United States Department of Justice's Obscenity Prosecution Task Force ("Task Force"). The agreement does not apply to or bind any other federal, state, or local prosecuting authority.

Upon entering a plea of guilty, Right Ascension, Inc. will be sentenced under the Sentencing Reform Act, 18 U.S.C. §3551, et seq. and 28 U.S.C. §991, et seq. The Sentencing Guidelines promulgated by the United States Sentencing Commission will be considered by the Court in imposing sentence. The facts relevant to sentencing shall be determined initially by the United States Probation Office and finally by the United States District Court by a preponderance of the evidence.

A. The defendant, Right Ascension, Inc. agrees to the following:

1. It will enter a plea of guilty to Count One of the Information at Criminal No. 10-143, a draft copy of which has been marked as Exhibit A and is

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attached hereto, charging it with causing obscene matter to be delivered by mail, in violation of Title 18, United States Code, Section 1461, pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

2. At the time Right Ascension, Inc. enters its plea of guilty, it will deposit a special assessment of \$400 in the form of cash, or check, or money order payable to "Clerk, U.S. District Court". In the event that sentence is not ultimately imposed, the special assessment deposit will be returned.
3. Right Ascension, Inc. waives the right to take a direct appeal from its conviction or sentence under 28 U.S.C. § 1291 or 18 U.S.C. § 3742, subject to the following exceptions:
 - (a) If the United States appeals from the sentence, Right Ascension, Inc. may take a direct appeal from the sentence.
 - (b) If (1) the sentence exceeds the applicable statutory limits set forth in the United States Code, or (2) the sentence unreasonably exceeds the guideline range determined by the Court under the Sentencing Guidelines, Right Ascension, Inc. may take a direct appeal from the sentence.

Right Ascension, Inc. further waives the right to file a motion to vacate sentence, under 28 U.S.C. § 2255, attacking its conviction or sentence, and the right to file any other collateral proceeding attacking its conviction or sentence.

B. In consideration of and entirely contingent upon the provisions of Parts A and C of this agreement, the United States Attorney for the Western District of Pennsylvania and the Task Force agree to the following:

1. The United States Attorney and the Task Force retain the right of allocution at the time of sentencing to advise the sentencing Court of the full nature and extent of the involvement of Right Ascension, Inc. in the offense charged in the

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Information and of any other matters relevant to the imposition of a fair and just sentence.

2. The United States Attorney and the Task Force will take any position they deem appropriate in the course of any appeals from the sentence or in response to any post-sentence motions.

C. Right Ascension, Inc., the United States Attorney and the Task Force further understand and agree to the following:

1. The penalty that may be imposed upon Right Ascension, Inc. is:
 - (a) A term of probation of not less than one (1) year and up to five (5) years;
 - (b) A fine of \$500,000;
 - (c) A special assessment under 18 U.S.C. §3013 of \$400.00.
2. The parties stipulate that the base offense level under Section 2G3.1(a) of the Sentencing Guidelines is 10. The parties agree that the base offense level should be increased by five (5) levels pursuant to Section 2G3.1(b)(1)(A) (distribution for pecuniary gain), by two (2) levels pursuant to Section 2G3.1(b)(3) (use of computer or an interactive computer service), and by four (4) levels pursuant to Section 2G3.1(b)(4) (sadistic or masochistic conduct or other depictions of violence). The defendant does not contest that the sexually explicit material described in the Information satisfies the test for obscenity set forth by the United States Supreme Court in *Miller v. California* under the contemporary community standards of the Western District of Pennsylvania. This stipulation represents the parties' best understanding on the basis of the information available as of the date of this agreement. The stipulation is not binding on the Court and does not preclude the parties from bringing to the attention of the United States Probation Office or the Court any information not within their knowledge at the time this agreement is executed.

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3. The parties agree that the appropriate sentence in this case is a term of probation of two (2) years, a fine of \$75,000.00 and a special assessment of \$400.00. With respect to the fine recommendation only, this sentence is below the guideline range for the following reason: The recommended fine is appropriate and in reasonable proportion to the relatively minor profits which accrued to the defendant from the sale of the material described in the Information.
4. Under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, and §6B1.2(b) of the Sentencing Guidelines, the Court is not bound by the agreed upon sentence. Even if the Court does not accept the sentence, the other provisions of this agreement remain in full force and effect.
5. The parties agree that the willful failure to pay any fine imposed by the Court may be treated as a breach of this plea agreement. Right Ascension, Inc. acknowledges that the willful failure to pay any fine may subject it to additional criminal and civil penalties under 18 U.S.C. §3611, et seq.
6. This agreement does not preclude the United States from pursuing any civil or administrative remedies against Right Ascension, Inc. or its property.

This letter sets forth the full and complete terms and conditions of the agreement between Right Ascension, Inc., the United States Attorney for the Western District of Pennsylvania and the Task Force, and there are no other agreements, promises, terms, or conditions, express or implied.

Very truly yours,



ROBERT S. CESSAR
Acting United States Attorney



BRENT WARD
Director
Obscenity Prosecution Task Force

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As the authorized corporate representative of Right Ascension, Inc. I have received this letter from attorney, Gary B. Zimmerman, Esquire, have read it and discussed it with him, and I hereby accept it and acknowledge that it fully sets forth the agreement of Right Ascension, Inc. with the Office of the United States Attorney for the Western District of Pennsylvania and the United States Department of Justice's Obscenity Prosecution Task Force. I affirm that there have been no additional promises or representations made to Right Ascension, Inc. by any agents or officials of the United States in connection with this matter.

John M. D'Arcangelo
Right Ascension, Inc.

by John M. D'Arcangelo,
President / CEO

7-13-10
Date

Witnessed by:

Gary B. Zimmerman
GARY B. ZIMMERMAN, ESQUIRE

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

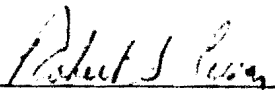
UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 10-143
)	
RIGHT ASCENSION, INC.)	(18 U.S.C. § 1461)
d/b/a Adult DVD Empire)	

INFORMATION

The United States Attorney charges:

On or about May 29, 2007, in the Western District of Pennsylvania, the defendant, RIGHT ASCENSION, INC., d/b/a Adult DVD Empire, knowingly caused to be delivered by mail according to the direction thereon to a post office box located in Erie, Pennsylvania, non-mailable obscene matter, that is, four DVD's identified as (1) "A Bounty of Pain", (2) "Shattering Krystal", (3) Extreme Tit Torture 18", and (4) "Pussy Torture 8".

In violation of Title 18, United States Code, Section 1461.



ROBERT S. CESSAR
Acting United States Attorney
PA ID No. 47736